IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CrRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1282 OF 2002.

Shri Javerchand Khimraj Jain
and others ..Petitioners.
V/s
Shri Kundanmal Hajarimal
Chauvan and others .. Respondents.

Ms. A.G. Bhaktwani for the petitoners.
Mr. Naik for respondent No.1.
Smt. M.M. Deshmukh, APP for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : 13TH OCTOBER, 2006.

P.C.

. Rule, returnable forthwith by consent.

2. This writ petition under Article 227 of the Constitution of India is directed against an order passed by the Additional Sessions Judge, thane in Criminal Revision Application No. 42/2002. By the order delivered on 29th August, 2002, the learned 3rd Additional Sessions Judge, Thane, allowed the Revision Application and directed the trial Court to issue process for offence punishable under Section 420 r/w section 34 of Indian Penal code against all accused and thereafter to proceed in accordance with law. The petitioners are the original accused. The first

respondent before me had filed a criminal complaint in the Court of Judicial Magistrate F.C., Bhiwandi being C.C. No. 98/2002 alleging commission of offences punishable under sections 417, 420,506 r/w section 34 of Indian Penal Code.

3. The first respondent alleged that on 23rd March, 2000 original accused Nos. 2 and 3 came to his residence and represented that they are doing business in partnership in the name and style "M/s Legal Impex and Modern Filaments" along with accused Nos. 4 and 5. They told the complainant that they would require a sum of Rs. 1,50,000/-, it should be advanced to them as a loan for expansion of their business.

4. The complainant proceeds to state that the accused Nos. 2 and 3 along with other accused represented that they are carrying on business in partnership and they would repay the loan within one year. Pursuant to negotiations a sum of Rs. 1,50,000/- was advanced by the complainant as a loan through Account Payee Cheque of Rs. 1, 50,000/-. The details are given in the complaint. After the period of one year the amount of Rs. 1,50,000/- was not repaid.

Several demands were made, but only interest of Rs. 23,530/- was paid . It is in such circumstances, that demand was made by the complainant but accused refused to repay the loan amount. It is in such circumstance, that the complainant alleges commission of the aforesaid offences.

5. The learned Magistrate after taking the complaint on file and recording verification statement, issued process only under section 506 of Indian Penal Code and declined to issue the process under the other provisions referred to above.

6. Aggrieved by this order, the matter was carried by the original complainant in revision and the learned Judge while allowing the revision application has directed that the process should be issued under other sections 420 of Indian Penal Code r/w section 34 thereof as well. He accordingly directed the issuance of process under that provision and thereafter to hold the trial in accordance with law.

7. The accused are aggrieved by this order and have invoked this Court’s jurisdiction as set out above.

8. Ms. Bhaktwani appearing for original accused submits that the complaint read as a whole does not disclose any offence and in any event under section 420 of Indian Penal Code. She submits that the ingredients under section 415 and 420 are not satisfied in this case. She submits that the complaint is only based upon a loan transaction and alleged failure to repay the amount thereunder. This is not the jurisdiction to recover the amount. The ingredients of offence of cheating are not at all satisfied. The learned Additional Sessions Judge, therefore, was in grave error in interfering with the order of the Magistrate.

9. Mr. Naik appearing for the original complainant supported the order of the learned Additional Sessions Judge and invited my attention to para 9 of the impugned Judgment and order.

10. With the assistance of the learned Counsel appearing for both sides, perused the complaint and the order under challenge. In my view, the complaint read as a whole does not disclose the offence of cheating at all. In my view, the ingredients which are essential to

constitute an offence of cheating are hopelessly lacking. Once the complainant alleges that the transaction is of loan and the amount was advanced as a loan with interest so also some payment is made of interest amount, then it cannot be said that there is any intentional inducement to do some thing namely part with the amount which would not have been parted with had the complainant been not deceived. Prima facie, there is no case made out that the petitioners had any intention of cheating at the time of availing of the loan. The entire reasoning in the impugned order is ignoring the complaint. It is sell settled that the complaint would have to be read as a whole for the purpose of finding out as to whether the ingredients of an offence alleged are satisfied or not. Criminal proceedings are not meant for settling the civil disputes. The parties should not be encouraged to take recourse to criminal law merely because their amounts are not recovered and outstanding.

11. In the result, the impugned order cannot be sustained. Rule is therefore, made absolute in terms of prayer clause (a). It is directed that the complaint shall now proceed only in so far as, an offence

punishable under section 506 of the Indian Penal Code. All contentions on merits are expressly kept open.

(S.C. DHARMADHIKARI, J.)